

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund

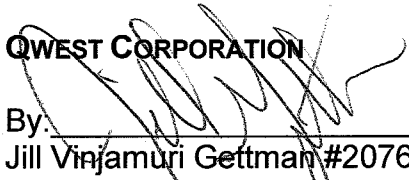
Application No. NUSF-1

**QWEST CORPORATION'S
NOTICE OF FILING TESTIMONY OF SUSAN MOHR
IN REPONSE TO PROGRESSION ORDER NO. 18**

Qwest Corporation ("Qwest") hereby notices and submits the attached testimony of Susan Mohr in response to Progression Order No. 18 on this 17th day of November, 2006.

Respectfully submitted,

QWEST CORPORATION

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ATTORNEYS FOR QWEST CORPORATION

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2

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund	Application No. NUSF-1
DIRECT TESTIMONY OF SUSAN MOHR ON BEHALF OF QWEST CORPORATION IN REPONSE TO PROGRESSION ORDER NO. 18	

3
4 ***Identification Of Witness***

5
6 **Q. Please state your name and business address.**

7 A. My name is Susan Mohr and my business address is 1801 California St.,
8 Denver, Colorado 80202. I am employed by Qwest Services Corporation
9 ("Qwest") as a Staff Director in the Public Policy organization.

10
11 **Q. Please describe your work experience.**

12 A. I have been employed by Qwest and U S WEST, for over seven years.
13 My experience with Qwest began in 1999 within Qwest's Mass Markets
14 organization. In 2001 I joined Qwest's Public Policy team as a Staff Advocate
15 with responsibilities for regulatory issues relating to Qwest's operations in Idaho
16 and in 2003 began managing Qwest's out of region operations from a regulatory
17 perspective. I began my current role as Staff Director in Public Policy in January
18 of this year with regulatory responsibilities for Qwest's Enhanced Service

1 offerings.

2

3 **Q. Please describe your educational background.**

4 A. I have a Bachelor of Science Degree in Microbiology from Montana State
5 University and a Master of Business Administration from Boise State University.

6

7 **Q. What are your current job duties?**

8 A. My current responsibilities include advocacy related to Qwest's enhanced
9 service offerings including wireless, wireless broadband, High Speed Internet,
10 and Voice over Internet Protocol (VoIP).

11

12 **Q. Have you previously testified before this commission or other state
13 commissions?**

14 A. No, I have not testified before the Nebraska Commission or any other
15 State Commission.

16

17 ***Purpose Of Testimony***

18 **Q. What is the purpose of your testimony?**

19 A. The purpose of my testimony is to comment on the proposed adoption, set
20 forth in Progression Order No. 18 of this docket, of some of the FCC's findings in
21 *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-
22 122, CC Docket No. 96-45, 2006 WL 1765838, Report and Order and Notice of

1 Proposed Rulemaking (rel. June 27, 2006)(*Interim Contribution Order*). The
2 Commission proposes to apply its definition of “telecommunications service”
3 used in Neb. Admin. Code Title 291, Chapter 10, Section 01.01X, to
4 interconnected VoIP carriers. Further, although the FCC declared that
5 interconnected VoIP service was interstate in nature,¹ the Commission interprets
6 the FCC’s adoption of the safe harbor mechanism as similar to that adopted for
7 wireless carriers who currently contribute to the NUSF using the FCC safe harbor
8 allocation factor, and therefore proposes a requirement that interconnected VoIP
9 providers offering service in Nebraska contribute to the NUSF based on the
10 FCC’s safe harbor allocation factor adopted in the Contribution Order.

11 *Discussion of Commission Proposal*

12 ***Discussion of Commission Proposal***

13 **Q. What is the proposed safe harbor allocation proposed in the FCC’s**
14 ***Contribution Order* and in Progression Order No. 18?**

15 **A.** As discussed in Progression Order No. 18, the FCC’s *Interim Contribution*
16 *Order* (subject to the resolution of pending appeals) requires “interconnected

¹ The FCC declared the interconnected VoIP service of Vonage, known as “DigitalVoice” was interstate in nature because it determined it was practically incapable of separating intrastate traffic for compliance with Minnesota’s requirements without negating the FCC’s federal policies. See *Interim Contribution Order*, ¶ 14.

1 VoIP providers”² to contribute to the federal universal service fund. Under the
2 Contribution Order, interconnected VoIP providers may use a safe harbor
3 established by the FCC of 64.9 percent, thereby considering 64.9 percent of their
4 calls interstate in nature. Or, in the alternative, interconnected VoIP providers
5 may develop a means to specifically determine the interstate/intrastate nature of
6 calls. The Commission proposes to adopt this methodology pursuant to Rule
7 002.01D1b of Chapter 10 of its Rules and Regulations, which generally states
8 that the Commission “may adopt any relevant FCC safe harbor provisions” in
9 connection with the assessment of NUSF surcharges. However, the parent of
10 Rule 002.01D1b, Rule 002.01D1, provides that “[t]he NUSF surcharge shall not
11 be assessed on interstate telecommunications services.”

12
13 **Q. Why is it important that the Commission refrain from assessing its**
14 **surcharge on interstate telecommunications services?**

15 A. 47 USC § 254(f) requires that any State universal service fund (“USF”)
16 regulations must not be “inconsistent with the [FCC’s] rules.” That section
17 permits states to require “telecommunications carrier[s] that provide intrastate
18 telecommunications services” to contribute to state universal funds. However,
19 any state USF regulations must “not rely on or burden Federal universal support

² Interconnected VoIP provider is defined in 47 C.F.R. § 54.5 as an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of the FCC’s rules. 47 C.F.R. § 9.3 provides that an interconnected VoIP service is “a service that (1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user’s location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.”

1 mechanisms.”

2

3 **Q. Before addressing the specifics of the Commission’s proposal,**
4 **would you please define what VoIP services are?**

5 A. VoIP is an application that enables real-time, two-way voice
6 communications over the Internet between two or more VoIP subscribers, and
7 between VoIP subscribers and users of “Plain Old Telephone Service” (“POTS”)
8 that use the conventional public switched telephone network (“PSTN”). To
9 enable communications between VoIP subscribers and POTS subscribers, the
10 format of the communication is “converted” between the internet protocol (“IP”)
11 and a different protocol used by the POTS networks. IP-enabled services,
12 including VoIP applications, may not be tied to a particular geographic location
13 such as a home or office, but can be used from any location with an IP
14 connection. The number assigned to a VoIP subscriber, which is physically
15 associated with a particular geographic location in a traditional POTS network,
16 may bear no relationship to the location of the VoIP subscriber’s home, office, or
17 more importantly, the location from which the VoIP subscriber places or receives
18 a communication.

19

20 **Q. Does the language of the Commission’s proposal need to be clarified**
21 **with respect to the formula it sets out for determining VoIP providers’**
22 **intrastate retail telecommunications revenue, and if so, how?**

23 A. The Commission’s proposal would prematurely include VoIP within the

1 definition of intrastate telecommunications services. The FCC has not yet
2 determined whether VoIP is a telecommunications service or information service.
3 Indeed, in its most recent pronouncement on the issue, the FCC did not
4 determine the question, instead deferring the issue for another time:

5 The Commission has not yet classified interconnected VoIP services as
6 "telecommunications services" or "information services" under the
7 definitions of the Act. Again here, we do not classify these services. To
8 the extent interconnected VoIP services are telecommunications services,
9 they are of course subject to the mandatory contribution requirement of
10 section 254(d). Absent our final decision classifying interconnected VoIP
11 services, we analyze the issues addressed in this Order under our
12 permissive authority pursuant to section 254(d) and our Title I ancillary
13 jurisdiction. Specifically, we find that interconnected VoIP providers are
14 "providers of interstate telecommunications" under section 254(d), and we
15 assert the Commission's permissive authority to require interconnected
16 VoIP providers "to contribute to the preservation and advancement of
17 universal service" because "the public interest so requires."³
18

19 In this pronouncement, the FCC expressly found that interconnected VoIP
20 providers are "providers of interstate communications," but did not find that VoIP
21 or any separable component thereof is an *intrastate* telecommunications service.
22 This pronouncement is consistent with previous FCC determinations that VoIP
23 services are jurisdictionally interstate.

24 If the FCC determines that VoIP is not a telecommunications service, then
25 it would be inappropriate for the Commission to deem VoIP to be a
26 telecommunications service. To the extent the Commission is not preempted
27 from including VoIP services in the services for which the NUSF surcharge is
28 assessed, then the Commission should have a distinct definition for VoIP and the
29 technical aspects of the service. Qwest submits that VoIP should be defined in a

³ *Interim Contribution Order*, ¶ 35 (footnotes omitted).

1 manner consistent with the federal definition. The Commission correctly
2 references the FCC definitions in its proposal, but any final order must include
3 this definition to provide clarity.

4
5 **Q. Should the Commission adopt the FCC's "safe harbor" provisions**
6 **from the FCC's Contribution Order? If so, should the "safe harbor"**
7 **intrastate percentage be 100% minus the federal percentage of 64.9%, or**
8 **35.1%?**

9 A. The Commission should consider whether it is appropriate to refrain from
10 implementing an NUSF surcharge on VoIP services until the FCC issues a final
11 order concluding the issues raised and discussed in the *Interim Contribution*
12 *Order*. The FCC repeatedly stated that its conclusions in the *Interim Contribution*
13 *Order* were just that – interim – and were adopted pending final resolution of
14 comprehensive "fundamental reform proposals" discussed in that docket, which
15 the FCC estimated would take "at least a year" to accomplish.⁴ The potential
16 exists for substantial confusion and a complete restructuring of the intrastate
17 NUSF surcharge if the Commission does not allow the FCC to complete its work
18 in establishing final comprehensive reform in its USF program. Indeed, if the
19 FCC determines that VoIP is not a telecommunications service, Nebraska
20 statutes and the Commission's rules would exclude VoIP services from the
21 surcharge. All indications are that the FCC is pressing ahead with

⁴ E.g., *Interim Contribution Order*, ¶ 20.

1 comprehensive reform of the FUSF contribution methodology and the entire
2 federal universal service program. However, if the Commission chooses to act
3 immediately, it should adopt its proposal on an interim basis, consistent with the
4 FCC's *Interim Contribution Order*. An interim safe harbor approach is a
5 reasonable short term solution, but not an appropriate long term solution. That
6 interim solution does not ensure that the impact of contribution is competitively
7 neutral as to types of providers contributing and how they are contributing.
8 NUSF contributions should not influence customer purchasing behavior. Neb.
9 Rev. Stat. § 86-323(5) requires that the NUSF mechanisms be competitively
10 neutral. Section 86-323(4) requires that surcharges must be assessed in an
11 "equitable and nondiscriminatory" manner. And, as noted above, the federal Act
12 requires that state regulations cannot be inconsistent with the federal rules or
13 "rely on or burden" the FUSF.

14
15 **Q. If adopted as an interim measure, does the Commission's proposal**
16 **provide adequate guidance for identifying revenues for purposes of**
17 **assessment and contribution of the NUSF surcharge?**

18 A. Generally, yes. The FCC's *Interim Contribution Order* provides guidance
19 for identifying revenues for reporting purposes. That order requires
20 interconnected VoIP providers to report and contribute to the FUSF on all
21 interstate and international end-user telecommunications revenues via three
22 options:

- 1 a. They may use the interim safe harbor established in the
2 *Interim Contribution Order*;
3
4 b. They may report based on actual interstate
5 telecommunications revenues; or
6
7 c. They may rely on traffic studies, subject to certain
8 conditions.⁵
9

10 It appears from Progression Order No. 18 that the Commission is considering
11 using these guidelines, but the Progression Order does not specifically mention
12 anything beyond the allocation factor mentioned in the *Interim Contribution*
13 *Order*.

14 Qwest recommends that if the Commission decides not to wait for the
15 FCC to complete the universal service reform docket and adopt an interim
16 contribution mechanism for interconnected VoIP providers, the Commission use
17 the same options outlined in the *Interim Contribution Order*. The FCC
18 understood and acknowledged the technical difficulty for some interconnected
19 VoIP providers to separate traffic on a jurisdictional basis, so it allowed the three
20 options outlined above to provide reporting flexibility to providers. If the FCC
21 safe harbor percentage is greater than actual interstate usage, providers may
22 contribute based on actual revenue allocation or by conducting a traffic study.

23 The FCC encourages interconnected VoIP providers to explore more
24 precise avenues for reporting, but does not require more precise avenues due
25 to technical limitations in identifying VoIP traffic based on jurisdiction. Qwest
26 believes the Commission should follow the FCC's lead here, as it appears the

⁵ *Interim Contribution Order*, ¶ 27.

1 Commission is proposing to do in Progression Order No. 18. Documentation
2 required in Nebraska should mirror existing state requirements, and should not
3 be burdensome or more detailed than necessary.

4

5 **Q. Does this conclude your testimony?**

6 **A. Yes.**